instructed to perform specific actions and when it knows that these latter instructions will be enforced.

With respect to the "physical collocation" mandate set forth in Section 251(c)(6), TRA again agrees with the Commission's assessment that it should adopt national standards in order to (i) "speed the negotiation process by eliminating potential areas of dispute" (ii) "facilitate entry by competitors in multiple states by removing the need to comply with a patchwork of state variations in technical and procedural requirements," and (iii) "add speed, fairness, and simplicity to the arbitration process and reduce uncertainty."[97] As to the content of those national rules, TRA endorses the Commission's tentative conclusion that the "premises of the local exchange carrier" at which Section 251(c)(6) requires that physical collocation be permitted should include, "in addition to incumbent LEC central offices or tandem offices, all buildings or similar structures owned or leased by the incumbent LEC that house network facilities" and urges the Commission to further expand this definition to include "structures housing LEC network facilities on public rights of way, such as vaults containing loop concentrators."[98] TRA also urges the Commission to expand the category of equipment that can be collocated -- *i.e.,* basic transmission equipment -- to include the concentrating equipment that is necessary to allow CLECs to efficiently transport traffic from customers to their switching locations.

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[97] Id at ¶ 67. TRA agrees with the Commission that the Section 251(c)(6) physical collocation requirement does not limit the Commission's authority to mandate other methods of interconnection, including virtual collocation and meet point interconnection arrangements, as well as any other technically feasible method of interconnection. Id at ¶ 64.

[98] Id at ¶ 71.

While Section 251(c)(6) provides for "virtual collocation," in lieu of physical collocation, if the "local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations," TRA urges the Commission to impose upon incumbent LECs a heavy burden of proof to justify any claim that physical collocation is technically infeasible at a given location. Moreover, space limitations should be immediate, not projected, to justify avoidance of physical collocation obligations.

Finally, TRA supports the Commission's proposal to "readopt[] [its] prior standards governing physical and virtual collocation," but recommends that it make certain modifications in those standards.[99] First, existing virtual collocation arrangements should be convertible to physical collocation arrangements. Second, entities should not be required to extend their own facilities to the collocation point; instead, they should be permitted to lease/purchase transport from the incumbent LEC and moreover, they should be permitted to lease transport from the collocation point to any other point on the incumbent LEC's network. Third, entities collocating at a given collocation point should be permitted to "cross-connect" among themselves. And fourth, a TSLRIC costing model should be employed to set collocation charges.

E. The Commission Should Not Limit The Purposes For Which A Telecommunications Carrier May <u>Request Interconnection (¶¶ 159 - 164)</u>

The Commission interprets Section 251(c)(2) to "impose[] limits on the purposes for which any telecommunications carrier, including interexchange carriers, may request

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[99] <u>Id</u> at ¶ 73.

interconnection pursuant [thereto]."[100] Noting that Section 251(c)(2) imposes on incumbent LECs an obligation to provide interconnection "for the transmission and routing of telephone exchange service and exchange access" and concluding that interexchange service "does not appear to constitute a 'telephone exchange service' . . . [or] to qualify as 'exchange access,'" the Commission tentatively concludes that the interconnection obligation does not extend to "telecommunications carriers requesting such interconnection for the purpose of originating or terminating interexchange traffic."[101] The Commission reasons that "exchange access" is defined as "the offering of access to telephone exchange services or facilities for the purpose of the ordination or termination of telephone toll service" and that an IXC does not "offer" access services; rather it "receives" such services. TRA disagrees.

First, Section 251(c)(2) contemplates only that the service provided by an interconnecting telecommunications carrier require interconnection with exchange service or exchange access; it does not establish the provision by the interconnecting carrier of exchange service or exchange access as a prerequisite for interconnection. The suggestion that Section 251(c)(2) requires an interconnecting carrier to provide not only exchange access, but exchange service as well, is even less tenable. Even if the Commission were correct that the provision of exchange access is a precondition to interconnection, the Congress certainly did not intend to deny CAPs interconnection opportunities; quite obviously, the word "and" in Section 251(c)(2)(A) means, at most, that incumbent LECs must make interconnection available for the provision of

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[100] Id at ¶ 160.

[101] Id at ¶ 161.

both exchange service and exchange access. Second, IXCs, including TRA's resale carrier members, do provide exchange access to their customers. IXCs acquire exchange access services from LECs and resell them to their end users; much the same way as interexchange resale carriers acquire intercity transport from facilities-based IXCs and resell that service to their end users.

TRA, however, agrees with the Commission that under Section 251(c)(3) "carriers may request unbundled elements for purposes of originating and terminating interexchange traffic, in addition to whatever other services the carrier wishes to provide over those facilities."[102] And TRA endorses the Commission's view that "[i]f a carrier that provides interexchange toll services purchases access to unbundled network elements in order to provide such toll service . . . the incumbent LEC may not assess Part 69 access charges in addition to the charges assessed for the network elements under sections 251 and 252."[103] Any other approach would constitute a windfall for the incumbent LEC.

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[102] Id at ¶ 163.

[103] Id at ¶ 165. This view should not impact the requirement under Section 272(e)(3) that RBOCs, after entering the in-region interexchange market, impose on their affiliates -- or impute to themselves -- access charges no lower than those they charge unaffiliated IXCs. Access charges would still be the touchstone for this requirement; amounts paid by an IXC for unbundled network elements are not "access charges," but charges for use of that network element.

F. The Commission Should Implement Section 252(i) In A Manner That Achieves Its Nondiscrimination Goals (¶¶ 269 - 272)

As the Commission has acknowledged, Section 252(i) is the "primary tool of the 1996 Act for preventing discrimination under Section 251."[104] Section 251(i) requires an LEC to make available to "any other requesting telecommunications carrier upon the same terms and conditions" any "interconnection, service, or network element provided under an agreement approved under [Section 252].[105] As is apparent, Section 252(i) recognizes no qualifications or restrictions and none should be superimposed on it.

The Commission queries whether the right to obtain interconnection, services or network elements on the same terms and conditions as those afforded another telecommunications carrier should be limited to carriers that are "similarly-situated."[106] The Commission further asks whether the costs of serving a carrier or the customers to whom the carrier will be providing service should impact its right to obtain terms and conditions provided to another carrier.[107] TRA agrees with the Commission that "the language of the statute appears to preclude such differential treatment among carriers."[108] Not only does the Section 252(i) not permit such limitations, but allowance of any such restrictions would open a "pandora's box," inviting perpetual disputes over which carriers are similarly-situated or what cost differences are real, much less material. TRA's

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[104] Id at ¶ 269.

[105] 47 U.S.C. § 252(i).

[106] Id at ¶ 270.

[107] Id.

[108] Id.

resale carrier members have repeatedly been, and are continuing to be, denied preferred service offerings and price points in the interexchange market under the guise of a "similarly-situated" criterion, often reflecting claims of serving cost differentials. The adverse consequences of this seemingly harmless limitation have been massive. TRA urges the Commission not to provide the incumbent LECs the same license to discriminate.

The Commission has also questioned whether a requesting telecommunications carrier must take service "subject to all of the same terms and conditions contained in the entire state-approved agreement" or whether Section 252(i) "permit[s] the separation of section 251(b) and (c) agreements down to the level of individual provisions of subsections (b) and (c) and the individual paragraphs of section 251."[109] While Section 252(i) does not speak directly to this issue, sound public policy would dictate that disaggregation of agreements be permitted. Again, relying upon the experience of its resale carrier members in the interexchange market, TRA submits that agreements can be structured to ensure that they are unavailable, as a practical matter, to anyone other than the immediate parties to the agreement. The greater the level of bundling or aggregation, the more likely an agreement can be so structured. Accordingly, if Section 252(i) is to serve its nondiscrimination role, individual provisions should be made available to other carriers.

Finally, the Commission asks whether agreements approved under Section 252 must be made available for an unlimited period and whether pre-existing interconnection

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[109] Id at ¶ 271.

arrangements must be made available to requesting telecommunications carriers.[110] TRA submits that so long as an interconnection arrangement is operative, it should be available to other requesting telecommunications carriers. While technological changes may occasionally necessitate renegotiation of existing agreements, until the agreement is supplanted with a new interconnection arrangement, there is no reason its terms and conditions should be denied to other carriers. And this concept applies with full force to "interconnection agreement[s] negotiated before the date of enactment of the Telecommunications Act of 1996" which pursuant to Section 252(a)(1), must also be submitted for approval by the States under Section 252(e).[111]

G. Obligations Imposed On Local Exchange Carriers (¶¶ 195 - 201, 226 - 248)

Section 251(b) of the '96 Act imposes certain duties and obligations on all LECs. TRA will discuss elements of two of these requirements briefly below.[112]

1. Resale (¶¶ 196 - 197)

Section 251(b)(1) obligates all LECs to make their telecommunications services available for resale and to not impose "unreasonable or discriminatory conditions or limitations"

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[110] Id at ¶ 272.

[111] TRA submits that interconnection agreements between incumbent LECs and non-competing neighboring LECs are subject to Section 251(c)(2) and hence must be made public and the terms and conditions thereof made available to requesting telecommunications carriers. These agreements clearly were entered into for purposes of transmitting and routing exchange service and exchange access. Moreover, they are precisely the type of benchmarks that will be useful in ensuring that interconnection with CLECs is not being structured or priced to hinder competitive entry.

[112] 47 U.S.C. § 251(b).

on such resale.[113] The Commission has asked what, if any, conditions or limitations may be imposed on resale of local telecommunications services by LECs. TRA agrees with the Commission that "few, if any, conditions or limitations should be permitted because such restrictions generally are inconsistent with the pro-competitive thrust of the Act and would likely be evidence of the exercise of market power."[114] TRA urges the Commission to apply its current policy that requires that "all common carriers . . . permit unlimited resale of their services" and which deems "[a]ctions taken by a carrier that effectively obstruct the Commission's resale requirements are inherently suspect."[115] Any restriction on resale -- express or indirect -- should be presumed to be unlawful because restrictions on resale are invariably designed to hinder competition.

2. **Reciprocal Compensation (¶¶ 226 - 244)**

Section 251(b)(5) imposes on LECs the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.[116] Section 252(d)(2) requires that for reciprocal compensation to be deemed just and reasonable it must provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier" and such costs must be determined on "the basis of a reasonable approximation

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[113] 47 U.S.C. § 251(b)(1).

[114] Notice, FCC 96-182 at ¶ 197.

[115] AT&T Forfeiture Order, 10 FCC Rcd. 1664 at ¶¶ 2, 13.

[116] 47 U.S.C. § 251(b)(5).

of the additional costs of terminating such calls."[117] However, Section 252(d)(2)(B) makes clear that "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)" are permissible.[118]

TRA urges the Commission to impose bill-and-keep arrangements as an interim reciprocal compensation arrangement for the transport and termination of telecommunications between networks. TRA submits that bill-and-keep should be the mandatory compensation arrangement for that period during which competitive providers are establishing initial footholds in local markets. Of course, individual LECs and CLECs could mutually agree on other cost recovery arrangements, but the consent of both parties would be required to replace the mandatory bill-and-keep arrangement.

TRA submits that as an interim measure, the bill-and-keep compensation arrangement provides a number of benefits. Bill-and-keep is relatively simple to implement and administer; no calculation of costs or metering of usage is required. Bill-and-keep is less costly than alternative mechanisms: because most networks lack the ability to measure the volume of exchanged traffic, this capability would have to be acquired at significant cost to the network operator. Because it does not require the additional capital investment other arrangements would necessitate, bill-and-keep reduces an economic barrier to entry. Moreover, bill-and-keep is a commonly used mechanism, often employed by incumbent LECs to exchange traffic among their

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[117] 47 U.S.C. § 252(d)(2)(A).

[118] 47 U.S.C. § 252(d)(2)(B).

networks. And lastly, as the Commission has recognized, bill-and-keep can be an efficient arrangement if the incremental cost to each network of terminating traffic on the other network approaches zero.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with the comments set forth herein.

Respectfully submitted,

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